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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

SCHLUMBERGER WELL SURVEYING CORPORATION,

Petitioner,

—against—

HALLIBURTON OIL WELL CEMENTING COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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Petitioner.

BRADY COLE,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

The petitioner above named prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit, whose decision in this cause was filed on September 5, 1942 (R. Vol. XII, pp. 5568-5577). Petition for Rehearing was denied October 12, 1942 (R. Vol. XII, p. 5598).

STATEMENT.

This is a patent infringement suit. The District Court (Southern District of Texas, Houston Division) adjudged patent No. 1,819,923,* dated August 18, 1931 (R. Vol. V, p. 3249), and patent No. 1,913,293,* dated June 6, 1933 (R. Vol. VI, p. 3826), both owned by petitioner, valid and infringed by respondent. He

* Patent No. 1,819,923 has three process claims and one apparatus claim, all of which are in suit; only claim 1 (a process claim) of patent No. 1,913,293 is in suit.

held that each patent described and claimed a meritorious and useful invention; that each had been issued in accordance with the Statute (35 U. S. C. Sec. 33); and that the evidence was such as to "compel a finding" that respondent's practices are "substantially identical" with those covered by said patents (R. Vol. I, p. 158).

The Court of Appeals, reversing the District Court, held invalid both patents in suit. The decision of the Circuit Court of Appeals was rested on the technical ground that the two patents, as drafted, do not meet the requirements of the Patent Statute, U. S. C. Title 35, Section 33 (R. S. 4888). In this connection, it held generally that the disclosures are not sufficiently full and clear to enable any person skilled in the art to practice the inventions in a useful manner, and that the patentee failed to point out and distinctly claim a useful invention or discovery.

PRINCIPAL QUESTIONS PRESENTED.

1. Did the Court below fail to follow applicable decisions of this Court, in applying *Mitchell* v. *Tilghman,* 19 Wall. 287, which held that a patent for a process must be construed as one covering the particular apparatus and mode of applying and using the process pointed out in the specification, and in disregarding (overlooking) the later case of *Tilghman* v. *Proctor,* 102 U. S. 707, which expressly overruled the earlier case of *Mitchell* v. *Tilghman?*

2. Did the Court below misconstrue the requirements of the Patent Statute, U. S. C. Title 35, Section 33 (R. S. 4888), and fail to apply applicable decisions of this Court, in holding that neither patent points

out in the disclosure, or distinctly claims, a useful invention?

3. Did the Court below disregard Rule 53a of the Federal Rules of Civil Procedure (providing that findings of the trial court shall not be set aside unless clearly erroneous), and disregard the decisions of this Court in *Davis* v. *Schwartz* (1895), 155 U. S. 631, 636, and *Adamson* v. *Gilliland* (1917), 242 U. S. 350, 353, to the same effect?

THE DECISION OF THE CIRCUIT COURT OF APPEALS.

The Court below did not disturb the finding of the trial judge that respondent has infringed (except that as to the resistivity patent it said there was no infringement if the patent were to be construed in a way which the Court below seems to have abandoned), and, although its opinion commented on the question of novelty as to one of the patents in suit (No. 1,819,923), its decision was not rested on that ground. Its opinion is somewhat confusing, but the final grounds for holding the patents invalid were that there was no sufficient labeling of what was new, and that there was no sufficient disclosure "to enable anyone to make useful electric logs solely by their teaching and the knowledge of one skilled in the art of electricity and well drilling". In reaching such conclusions it applied principles laid down in an *overruled* decision of this Court, and with that erroneous rule as a premise it held that the patents did not comply in their disclosures with the Patent Statute. Those fundamental errors permeate the entire decision below, and in addition the Court below plainly disregarded Rule 53a of the Federal Rules of Civil

Procedure and decisions of this Court, in respect to the weight to be given the trial court's findings.

With regard to the first and second questions, the Court of Appeals obviously overlooked the decision of this Court in *Tilghman* v. *Proctor, supra.* It cited in one instance, and it adopted without reservation as to both patents, the reasoning of the overruled case of *Mitchell* v. *Tilghman* (which was not cited by either party in their briefs or referred to at the argument) and construed the two patents as covering merely the particular apparatuses and the particular modes of applying or using the processes of those patents which were set forth in the specifications, by way of illustration. It then found that the processes disclosed in those patents as so construed were not useful, within the meaning of the Statute, by comparing such disclosures with the *commercial* apparatuses and particular modes of applying such processes which had been developed during years of use by the new art and industry created by those very patents. It found that, because such "refinements of method and improvements in apparatus have been made over the simplicities of the patents in controversy" by the new art and industry which those patents created, "what Schlumberger in the disclosures of these patents gave to the public is not such as the Statute contemplates * * *".

With regard to the third question, the Court of Appeals found that the patents in suit contain "no sufficient disclosure to enable any one to make useful electrical logs solely by their teaching and the knowledge of one skilled in electricity and well drilling", and that the utility of the commercial logs results from "refinements of method and improvements in apparatus", rather than from the pioneer methods

disclosed and claimed by the patents in suit. In so doing, the Court of Appeals ignored the established rule that findings of a trial court cannot be set aside unless "clearly erroneous" and unequivocal findings of fact to the contrary, which were made by the Trial Court, with ample evidence to support them.

FACTS.

1. The inventions covered by the patents are fundamental and pioneer in character and created the new art and industry of "electrical logging"* of oil wells.

The pioneer nature of "electrical logging", as first introduced to the practical arts by the patentee, is established by the depositions of thirty-six disinterested practical men of the petroleum industry who were subpoenaed by petitioner (R. Vols. V-VI, pp. 3473-3824). These men, representing a true cross-section of those using electrical logs made by the processes in issue, established that, prior to the introduction by Schlumberger of electrical logging, no electrical method for obtaining the information given by such electrical logs had ever been known; that such electrical logging had revolutionized the practices in the industry; and that electrical logging had made the greatest difference in exploring technique since the introduction of rotary drilling (30 years earlier).

These depositions also show that in the earlier method of "mechanical coring", cores or samples of earth are withdrawn from the drill hole from time

* "Electrical logging" is a term coined by the patentee and used in the specification of patent No. 1,819,923 in suit (R. Vol. V, p. 3250, l. 36) and since adopted by the petroleum industry as descriptive of the type of chart or log first introduced commercially by the patentee and produced by the practice of the inventions here involved.

to time, during the course of drilling. These cores are examined in the laboratory to determine the nature of the formation at the particular depth at which they were recovered. One serious objection to this method is that cores are taken only at intervals and thus innumerable oil sands have been entirely missed. "Electrical logs", on the contrary, give a continuous record from top to bottom of the hole, and hence have revealed countless oil sands that would otherwise have remained undetected.

The Circuit Court of Appeals recognized that "electrical logs are now made for almost all rotary drilled wells * * * " and that "without doubt electrical logging as now done by appellant and appellee has made a great practical stride in the oil well art."

2. By the practice of the two processes involved, for the first time in this art indications are obtained of distinguishing *electrical* properties of all geological formations or strata *in situ* traversed by a rotary-drilled bore hole sunk for the exploitation of productive oil sands at depth (R. Vol. I, p. 231). The device for obtaining these indications is *immersed in water* contained in the bore hole. From these electrical indications can be deduced the identity and nature of the geological formations traversed, the depth of their top and bottom boundaries, and whether or not they are porous (sands).

Prior to the introduction of the patented methods by the patentee, no electrical method was known or used for obtaining such information. "Mechanical coring" was the most useful method theretofore known for obtaining any information concerning the geological strata traversed during the course of drilling an oil well. In "mechanical coring", physical samples or cores of earth were withdrawn from the

drill hole from time to time and examined in the laboratory to determine their nature. Such "mechanical coring" was very unsatisfactory and undependable; it was expensive and in its nature did not afford information concerning all formations traversed from top to bottom of the drill hole, because the physical "cores" or "samples" were taken only at intervals and at such depths as were selected by the operator. In taking such "cores", a large part of the material is ordinarily lost, thus rendering less certain information as to the depth at which the sample was actually recovered.

3. Patent No. 1,819,923 (sometimes referred to as the "resistivity" patent) discloses and claims an electrical process for determining the nature of the geological formations *in situ* traversed by a bore hole. The patent drawing (R. Vol. V, p. 3249) shows an electrical exploring device for practicing the method, comprising three electrodes A, M and N, which is adapted to be lowered in the water in a drill hole.* These three electrodes are fixed and maintained apart at known distances. An electric current from "any suitable source" (R. Vol. V, p. 3250, pat. p. 1, l. 50) is impressed on electrode A during the operation. The value of the current is measured by the ammeter A at the surface of the ground. The current thus applied to electrode A flows through the adjoining formation and causes a difference of electrical potential on the electrodes M and N. The value of this potential difference is indicated on the instrument P which is in circuit with the electrodes M and N. The astonishing principle and discovery which character-

* Bore holes sunk as oil wells may extend to depths of 15,000 feet, the depth in the Gulf Coast usually ranging from 6,000 to 9,000 feet.

ize and underlie this process reside not only in the fact that the system is *not short-circuited* by the highly conductive fluid contained in the drill hole and in which the three electrodes A, M and N are immersed, but also in the fact that, as stated by the patentee (Pat. spec. p. 2, l. 25, R. Vol. V, p. 3251): "The measure of potential between the electrodes M and N *in the water* is then equivalent to a measure made *inside the earth* at distances r and r′ from the electrode A." (See Ex. 47, bound herein at the end of the brief, R. Vol. VI, p. 4048).* The distances r and r′ are the known and fixed distances between the current electrode A and the potential electrodes M and N, respectively.

The formula on page 2 of the patent is a shorthand expression of the relationship between the value of the current flowing from A, the distances between electrodes A and M and N, respectively, and the difference of potential between M and N caused by the resistance of the adjacent formation to the current flow. This formula is merely an expression of Ohm's law extended to a three-dimensional conductor (the earth). Since the distances between the electrodes are known and constant, when the current emitted from electrode A is held constant (as it is in practice), the difference of potential between electrodes M and N is directly proportional to the electrical resistance of the adjacent formation, despite the fact that all three of the electrodes comprising the device are *immersed in* the same column of highly conductive *water*.

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* This Exhibit 47 has been reproduced and bound in at the end of this Petition and Brief. It is like the patent drawing with points M′ and N′ added within the earth at distances r and r′ from the current electrode A, to illustrate the quoted statement from the patent.

As to the resistivities of the formations thus measured, the patent states: "I have discovered that the specific resistivity . . . *sufficiently* characterizes the different rocks so that it is possible to deduct the nature thereof *from the figures obtained* in the electrical readings. The final results of these measurements taken along a drill hole are given in the form of a *diagram of the resistivities* of the rocks at *different* depths. This 'electrical log' shows the depth of the geological horizons, such as the top of any given formation." (Pat. p. 1, l. 25, R. Vol. V, p. 3250.) The language quoted above from the patent plainly states and shows that not only are resistivity "figures obtained" but also that a "log" necessarily showing *variations* of such resistivities is formed. In spite of this description, the Court below not only stated erroneously that values of resistivities are not obtained and are of no use, but further stated erroneously that the specification has no sufficient teaching of the use of "variations" of resistivity for purposes of comparison.

A typical commercial "electrical log" (Ex. 36) made by petitioner is reproduced at p. 4037, R. Vol. VI. A commercial log made by respondent in the same well on the same day is reproduced at p. 3945 of R. Vol. VI. The solid line curve appearing at the right-hand side of each log is the resistivity curve made in accordance with the process of patent No. 1,819,923. This curve is so calibrated that the value of the resistivities of all formations traversed are obtainable. This "log" was made by the practice of the patented methods in suit. The solid line curve at the right-hand side of the log is a resistivity curve. The curve shows resistivity values at different depths and is a "diagram" showing "variations" in such resistivities for comparison with logs of other wells.

Claim 1 of the patent defines the steps of procedure

comprising the novel method and by means of which the nature of the formations traversed by a drill hole is determined by an *electrical* method. These steps as recited include the measurement of the resistivity of the *formations encountered,* the measurement of such resistivities in a hole which contains *water,* and the repetition of such measurements at *different* depths inside the drill hole.

The method as described in the resistivity patent was literally followed by the patentee in the United States in the State of Oklahoma in 1929, in successfully making 30 logs (R. Vol. III, pp. 2242-2252). This precise method, at that time, was also in *commercial* use in France and Venezuela (R. Vol. III, p. 2251). These facts, standing unrefuted, are directly contrary to the erroneous assertions made by the Circuit Court of Appeals.

The logs of both parties give to the customer the identical information concerning the geological strata traversed by a bore hole and this is the information which is expressly described in the two patents in suit. (See Respondent's declared purpose, R. Vol. VI, p. 3883; R. Vol. VII, pp. 4057, 4058.)

The Court below criticized the utility of each of the patented methods because they are used together. This criticism is unwarranted as each method is useful standing alone. The second method gives additional useful information because it prevents any question arising as to whether or not a particular formation at depth is *porous* or *non-porous.*

4. Patent No. 1,913,293 (sometimes referred to as the "porosity" patent) discloses and claims an *electrical* process for determining whether geological formations or strata traversed by a bore hole are

porous (permeable) or non-porous (impervious). Oil and salt-water are found only in porous formations (sands).

The process is based on the patent's discovery that by causing water to filter into sands at depth in a bore hole, an electromotive force will be generated by such filtration, which electromotive force will cause a *measurable* electric current to flow in the water in the bore hole *exactly opposite* the face of the sand. (See Ex. 32 bound herein at the end of the brief; R. Vol. VI, p. 4033*.) The patentee made this brilliant *discovery*.

The patentee's method as described and claimed, is expressly limited, however, to the measurement of *differences of potential* arising in the drilling fluid from the electric current spontaneously generated by infiltration of the fluid into a sand. The patent states: "This electric current gives rise by ohmic effect to differences of potential, and the *measurement of these differences* constitutes the *basis* of the process herein described" (R. Vol. VI, p. 3827; pat. p. 1, l. 59). The patent further states: "Such a filtration gives rise to an electric current which may be observed by measuring the *differences of potential* it creates in the water contained in the drill hole, exactly at the level of the porous stratum" (R. Vol. VI, p. 3827; pat. p. 1, l. 78).

Claim 1 of the patent does *not* fail to distinctly claim the process described, as the Circuit Court of Appeals erroneously stated. On the contrary, it is expressly limited to the measuring of the "differences

* Exhibit 32 has been reproduced and bound in at the end of this Petition and Brief. It shows the flow of an electric current in the drilling fluid exactly at the level of a porous sand, this current having been generated spontaneously by the infiltration of the drilling fluid into a sand.

of potential" referred to in the excerpts quoted above from the specification.

The entire "electrical" process defined by claim 1 is basically new. However, its breadth is specifically delimited by the precise steps recited. The claim does not cover *any* process other than an "electrical" process (as contrasted, for example, with a magnetic or radio-wave process); and such "electrical" process, as claimed, is limited to the measuring of the "differences of potential" which arise in the drilling fluid from the current spontaneously generated by electrofiltration.

The claim on its face refutes the Circuit Court's unwarranted implication that *O'Reilly* v. *Morse,* 15 How. 62, may have application in the instant case. The claim is not addressed to the use of a natural phenomenon, as was the claim in the *Morse* case. On the contrary, the claim here in suit is addressed to a series of steps comprising a method, and one of these steps is limited specifically to *electrical* measurements, in the water, of *differences of potential* arising from a spontaneously generated current. This current is produced by man-made conditions and does not exist naturally.

The "differences of potential" which are thus measured are recorded by both parties, in accordance with the direction of the patent, which states: "In practice, the diagrams are obtained directly by means of an automatic continuous device, which registers the value of the potential upon a sheet of paper * * *" (R. Vol. VI, p. 3829; pat. p. 3, l. 31).* The curve at the left-hand side of the commercial log

* The commercial "electric logs" of both parties (petitioner's log, R. Vol. VI, p. 4039; respondent's log, R. Vol. VI, p. 3945) show this curve on the left-hand side of each chart. This curve is calibrated to show the value of the characteristic "differences of potential" resulting from the described process.

is the curve showing said "differences of potential". On the "electrical logs" of both parties the flat portions of the curves (appearing on the left-hand side of the logs) indicate that the formations are non-porous. Wherever the curves diverge from this flat portion, such divergence indicates that the formations are porous. The *commercial* practices of both parties are precisely in accordance with the description of the porosity patent No. 1,913,293, contrary to the erroneous statements of the Circuit Court of Appeals.

5. In practice, the curve indicating the *porous* or permeable formations traversed by the drill hole is made on the same sheet of paper and simultaneously with the making of the curve of resistivities described above. The making of the two curves simultaneously during a single survey is more convenient and economical and assures absolute accuracy as to depth indications for both curves.

The "porosity" process enables one to identify *sands* and determine the depths of their top and bottom boundaries. Oil occurs in sands and so does salt water. Oil has high electrical resistance and salt water low electrical resistance. Hence, the practice of the two processes covered by the two patents in suit enables one to identify *sands* and to determine whether they contain *oil* or *salt water*. The practice of one, simultaneously with the other, in no way modifies or affects either.

The Circuit Court of Appeals erroneously, and without the support of any testimony, stated that "Neither patent practiced by itself would have had any success." The fact is that the method of the earlier patent (the resistivity patent) was practiced

successfully "by itself", in Oklahoma, France and Venezuela, as stated above. The separate methods when practiced *simultaneously* are not modified. They are not to be condemned because appropriate apparatus was devised to permit them to be practiced simultaneously for reasons of convenience and speed.

6. Petitioner is a small independent corporation* organized in 1934 for the purpose of providing to the petroleum industry the inexpensive and revolutionary service comprising the practice of the processes in suit. In 1938, it licensed a responsible service company** to practice such processes (R. Vol. X, p. 5399). This licensee, along with petitioner, offers such service to petroleum companies in every oil field in the United States where rotary drilling is employed (R. Vol. III, pp. 2294, 2296). The service is satisfactory and the cost to the customer is of the order of twelve cents ($.12) for each foot of well surveyed against a cost of ten dollars ($10) per foot for the old and unsatisfactory method of "mechanical coring".

7. Respondent is a service company*** which devoted itself to the "cementing" of oil wells from 1924 to 1938, at which time it added to its service the accused process of "electrical logging" (R. Vol. V, pp. 3442-3444).

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* Petitioner is organized under the laws of Delaware. Its principal office is in Houston, Texas. Its crews now operate in every oil producing State from Illinois to the Gulf Coast and to the Pacific.

** The Lane-Wells Company is a well-known service company organized under the laws of Delaware and having its principal office in Los Angeles, California.

*** Respondent is a corporation of Delaware, having its principal office in Duncan, Oklahoma.

8. The infringement was initiated and sponsored by a subsidiary of the Standard Oil Company of New Jersey, the Humble Oil Company (theretofore a large customer of petitioner), to obtain for itself and other subsidiaries of the Standard Oil Company of New Jersey a preferential discount. Before taking this step, Humble Oil Company sought a preferential discount of 50% from petitioner, which was refused (R. Vol. X, pp. 5421, 5422). The Humble Oil Company, being familiar with petitioner's patents and commercial logging methods, later took out two patents (issued in 1936 and 1938, respectively, R. Vol. VII, pp. 4239, 4247) on certain alleged "improvements" on the inventions here in suit. These patents were assigned to Standard Oil Development Company (a subsidiary of Standard Oil Company of New Jersey). That Company then "licensed" (R. Vol. V, p. 3499; Vol. IV, p. 2961) the respondent under said patents, upon the condition, *inter alia*, that a preferential discount of 20% on respondent's price for electrical logging should be extended to Humble Oil Company and all other affiliated companies of the Standard Oil Company of New Jersey.* The Humble Oil Company has a 6% stock interest in the respondent corporation (R. Vol. V, p. 3456). It arranged the "licensing" plan and has assisted in the defense of this suit. Its engineers established the infringement and one of them entered the employ of the respondent to direct the commercial operations (R. Vol. IV, pp. 2967-2969).

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* This elaborate "licensing" plan was merely a device to lend color to the ostensible consideration for the preferential discount. It is to be noted that respondent did not offer any testimony to show that in its accused practices it even uses the "improvements" covered by these patents.

9. The present suit was brought by petitioner to enjoin respondent from carrying to successful fruition, with the connivance and procurement of the Humble Oil Company, their efforts to deprive petitioner of the benefit of the patents in suit, so that Humble Oil Company and other affiliated companies of the Standard Oil Company of New Jersey might be let alone to enjoy without expense the fruits of the patentee's genius and investment.

10. Petitioner, petitioner's licensee, Lane-Wells Company, and respondent are the only parties practicing "electrical logging" in the United States (R. Vol. III, p. 1772). Respondent is the only infringer of petitioner's patents. Further litigation with a resulting conflict of decision is improbable because of priorities upon essential materials and equipment which would prevent the establishment of such a service, at least for the duration of the war.

SPECIFICATION OF ERRORS.

The Court of Appeals erred

1. In applying the reasoning and construction followed in the overruled case of *Mitchell* v. *Tilghman*, 19 Wall. 287, which is in direct conflict with the applicable rules of construction for process patents laid down by this Court.

2. In holding that the claims in suit of both patents do not distinctly claim what is new and useful.

3. In holding that the disclosures of both patents are not sufficient to enable any person skilled in the art to apply the processes usefully.

4. In reversing findings of fact of the Trial Court, which were amply supported and as to many of which there was no substantial evidence to the contrary, in disregard of the provisions of Rule 53a of the Federal Rules of Civil Procedure and applicable decisions of this Court.

5. In holding that "Neither patent practiced by itself would have had any success" (R. Vol. XII, p. 5571).

6. In holding that "The older patent was a commercial failure till combined with the second, and the combination made little progress until both the processes and instruments were changed to eliminate inaccuracies in ways * * * which greatly enhanced if they did not wholly produce the commercial success (R. Vol. XII, p. 5571).

7. In holding that "The necessary substitution of alternating current for the direct current which was shown in the first patent, and the special apparatus necessary to use the same cable and instruments in the making of all the desirable curves in one quick operation, and to eliminate disturbing intrusions, were things that were slow in coming, and the results of independent research and experiment" (R. Vol. XII, p. 5576).

8. In holding that "As to both these patents we are further of opinion that no sufficient disclosure of methods is made to enable any one to make useful electrical logs solely by their teaching and the knowledge of one skilled in electricity and well drilling" (R. Vol. XII, p. 5576).

9. In holding that "The appellee and its predecessor began in 1929 an effort to make these electrical investigations about 'resistivity', but without any commercial success, at least in the United States" (R. Vol. XII, p. 5570).

10. In holding that "the definite calculation of specific resistivity * * * is not useful, and is not used" (R. Vol. XII, p. 5574, referring to the resistivity patent No. 1,819,923).

REASONS FOR GRANTING THE WRIT.

The discretionally power of this Court is invoked upon the following grounds which fall within more than one of the classes described in paragraph 5 of Rule 38 of the Rules of this Court as appropriate for certiorari.

1. The Court of Appeals in its opinion followed the erroneous reasoning and construction of process patents expressed in the case of *Mitchell* v. *Tilghman* (1874), 19 Wall. 287, in that it determined the utility of the processes solely in the light of the *commercial* suitability of the precise *apparatuses* and *particular modes of applying* and using the processes, as disclosed in the specifications of the two patents in suit, rather than the correct construction expressed in the later case of *Tilghman* v. *Proctor* (1881), 102 U. S. 707 (which expressly overruled the *Mitchell* case *involving the same process patent*).. In the *Proctor* case, it was held that a patent for a process, *irrespective* of the disclosed *apparatus* or *particular mode of applying* the process, satisfies the statute provided it merely described some apparatus and particular mode

of applying the process "by which the *process can be applied* with at least some beneficial result."

The construction of the Court of Appeals of the two patents in suit is in direct conflict with the applicable rules of construction for process patents laid down by this Court.

> *Tilghman* v. *Proctor*, 102 U. S. 707;
> *Corning* v. *Burden*, 15 How. 251, 267;
> *O'Reilly* v. *Morse*, 15 How. 62;
> *The Telephone Cases*, 126 U. S. 1, 534-536.

This error was fundamental. It permeates the entire decision below and formed the erroneous premise on which other conclusions of the Court were based.

2. As a consequence of the foregoing mistake in the law, the Court below erroneously construed the Patent Statute and ignored the applicable decisions of this Court listed above in holding that the disclosures and claims in issue of the two patents in suit do not sufficiently point out and distinctly claim useful inventions.

3. The Court of Appeals, in finding, *inter alia*, that the patents in suit contain "no sufficient disclosure of methods * * * to enable any one to make useful electrical logs solely by their teaching and the knowledge of one skilled in electricity and well-drilling", and that the commercial utility of electrical logs is dependent on "refinements of methods and improvements in apparatus * * * over the simplicities of the patents in controversy", reversed essential findings of fact which were made by the District Court and amply supported by the evidence, thus rendering a decision which is in direct conflict with the accepted and usual course of judicial procedure,

as laid down by Rule 53a of the Federal Rules of Civil Procedure and by the decisions of this Court in *Davis* v. *Schwartz* (1895), 155 U. S. 631, 636; and *Adamson* v. *Gilliland*, 242 U. S. 350, 353.

4. There is no conflict of opinion between Circuit Courts of Appeals with respect to the patents in suit, and as explained elsewhere (p. 16), there is not likely to be until the war ends, but in view of (a) the sharp conflict in conclusions reached by the Trial Judge and by the Court of Appeals, in a case involving pioneer inventions of great social and economic benefit to the public and to the petroleum industry, and (b) the plain failure of the Court below to apply and follow applicable decisions of this Court and its total disregard of the Trial Court's findings, a review by this Court is warranted.

PRAYER.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari be issued to the Circuit Court of Appeals for the Fifth Circuit, to the end that this cause may be reviewed and determined by this Court; that the decree of the Circuit Court of Appeals for the Fifth Circuit be reversed; and that petitioner be granted such other and further relief as may be proper.

Respectfully submitted,

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December, 1942.